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硕 士 学 位 论 文

# 渔业争端中沿海国执法的案例解析

Case Study on Coastal State's Law Enforcement  
in Fishery Disputes

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## 内容摘要

由于世界渔业资源正面临衰退的威胁，为了维持海洋渔业资源的可持续发展，沿海国纷纷加强对本国管辖水域内渔业资源的管理与养护，加大渔业执法的力度，因而直接导致各国之间因渔业资源而起的纠纷、争端明显增加。同时，沿海国通过渔业执法活动，在沿海国本国的渔业利益和外国渔民在沿海国管辖水域享有的渔业权利之间进行着利益的调节与平衡，体现了沿海国对于渔业资源利用与开发的立场以及对本国主权权利的维护，因此也很有必要对沿海国在渔业纠纷中的执法行为进行比较与研究。

本文尝试对实践中的渔业执法案例进行研究，指出目前各国渔业纠纷中执法行为存在的问题，并结合国际法、国内法等法律规定，为渔业纠纷的执法及争端解决，提出可行的建议与解决途径。

本文共包括四个部分：第一章，从《联合国海洋法公约》的角度，就沿海国在渔业方面的权利与义务，分别从内水、领海、专属经济区以及公海不同管辖海域展开介绍，阐述沿海国渔业权利与义务的法理基础。第二章，着重从各国实践的案例入手，通过介绍相关国家的渔业执法案例，分析沿海国执法行为背后的动机，指出目前沿海国在渔业纠纷执法中存在的问题。接下来，在第三章中，集中研究国际海洋法法庭在“塞加号”案件中的判决，分析国际海洋法法庭对于沿海国渔业执法所持的立场，并从中归纳得出沿海国在渔业执法中应当遵循的基本原则与行为方式。最后，在第四章进一步深入，对渔业争端解决途径进行讨论，建议我国吸取各国的有益经验，加强对《联合国海洋法公约》的争端解决机制的运用，与相关沿海国国家加强渔业合作，不断提高我国的渔业执法与管理水平，从而切实提高我国应对国际海洋事务的能力，实现对海洋渔业资源的和平开发和利用。

**关键词：**渔业争端；沿海国执法；争端解决

## ABSTRACT

Considering the fishery resources are declining around the world, coastal states concern the fishery resources' preservation, conservation and management within its jurisdiction, and decide to take serious measures in its law enforcement, which actually lead to a sharp increase in fishery disputes among different states. Coastal States' law enforcement in fishery disputes, as the mechanism of adjusting and balancing the coastal state's interest and foreign nationals' fishing right in its jurisdictional water, not only defines its position for fishery resources' exploitation and exploration, but also represents its sovereignty rights. Therefore, it's necessary to pay attention to the issues on Coastal States' law enforcement in fishery disputes.

As to this paper, the purpose of this writing is to make an analysis of Coastal States' law enforcement practice in fishery disputes, and offer feasible solutions to coastal states according to the laws.

There are four Chapters in this paper. Chapter I primarily addresses Coastal State's rights and duties on fishery resources in light of UNCLOS. Coastal States enjoy varying degrees rights in its internal water, territorial sea, EEZ and high sea, but along with the diverse duties respectively in these zones. Chapter II, as the main part of this paper, it firstly examines the typical cases all over the world on Coastal State's law enforcement in fishery disputes. Based on these materials, it then analyzes the motive for coastal states to take such measures, to help better understand of its causes and purposes in practice. Finally it summarizes the main issues in Coastal State's law enforcement in fishery disputes based on the cases. Chapter III reviews the first case of the new International Tribunal of the Law of the Sea, the M/V Saiga case. From the judgment given by the Tribunal, it set out the basic principles for Coastal State's law enforcement in fishery disputes, emphasizing the necessity and proportionality limits to its enforcement activities in fishery disputes, which provides advice and standard for states' practice in settlement of

fishery disputes. Further, Chapter IV focuses on the settlement methods in fishery disputes, so as to give solutions applicable to such situations. For China, it's especially important to learn the experiences from other states in fishery disputes' settlement and law enforcement, including making good use of dispute settlement in UNCLOS, cooperating with Coastal States, and improving our law enforcement and management on fishing, thus to promote China's performance in international marine affairs, and realize the peaceful exploitation and utilization of fishery resources finally.

**Keywords:** Fishery Disputes; Coastal States' Law Enforcement; Dispute Settlement



## 缩略语表 Abbreviations

ACZISC	Atlantic Coastal Zone Information Steering Committee 大西洋地区信息指导委员会
EEZ	Exclusive Economic Zone 专属经济区
FAO	Food and Agriculture Organization 联合国粮食与农业组织
ITLOS	International Tribunal for Law of the Sea 国际海洋法法庭
IUU	Illegal, Unreported and Unregulated Fishing 非法的、不作报告 and 不受管制的捕鱼（非法捕鱼）
MCS	Monitoring, Control and Surveillance 监测、控制和监督
UNCLOS	United Nations Convention on Law of the Sea 《联合国海洋法公约》

## 案例表 Table of Cases

The M/V “SAIGA” Case No. 1	Saint Vincent and the Grenadines v. Guinea, Prompt Release Judgment of 4 December 1997 <a href="http://www.itlos.org/cgi-bin/cases/case_detail.pl?id=1&amp;lang=en">http://www.itlos.org/cgi-bin/cases/case_detail.pl?id=1&amp;lang=en</a>
The M/V “SAIGA” Case No. 2	Saint Vincent and the Grenadines v. Guinea, Judgment of 1 July 1999 on Provisional Measures <a href="http://www.itlos.org/cgi-bin/cases/case_detail.pl?id=2&amp;lang=en">http://www.itlos.org/cgi-bin/cases/case_detail.pl?id=2&amp;lang=en</a>
Southern Bluefin Tuna Cases	New Zealand v. Japan; Australia v. Japan, Provisional Measures August 1999 <a href="http://www.itlos.org/cgi-bin/cases/case_detail.pl?id=3&amp;lang=en">http://www.itlos.org/cgi-bin/cases/case_detail.pl?id=3&amp;lang=en</a>
The “Camouco” Case	Panama v. France, Prompt Release Judgment of 7 February 2000 <a href="http://www.itlos.org/cgi-bin/cases/case_detail.pl?id=4&amp;lang=en">http://www.itlos.org/cgi-bin/cases/case_detail.pl?id=4&amp;lang=en</a>
The “Monte Confurco” Case	Seychelles v. France, Prompt Release Judgment of 18 December 2000 <a href="http://www.itlos.org/cgi-bin/cases/case_detail.pl?id=5&amp;lang=en">http://www.itlos.org/cgi-bin/cases/case_detail.pl?id=5&amp;lang=en</a>
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The “Volga” Case	Russian Federation v. Australia, Prompt Release Judgment of 23 December 2002 <a href="http://www.itlos.org/cgi-bin/cases/case_detail.pl?id=11&amp;lang=en">http://www.itlos.org/cgi-bin/cases/case_detail.pl?id=11&amp;lang=en</a>
The “Juno Trader” Case	Saint Vincent and the Grenadines v. Guinea-Bissau, Prompt Release Judgment of 18 December 2004 <a href="http://www.itlos.org/cgi-bin/cases/case_detail.pl?id=13&amp;lang=en">http://www.itlos.org/cgi-bin/cases/case_detail.pl?id=13&amp;lang=en</a>

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The “Hoshinmaru” Case	Japan v. Russian Federation, Prompt Release Judgment of 6 August 2007 <a href="http://www.itlos.org/cgi-bin/cases/case_detail.pl?id=14&amp;lang=en">http://www.itlos.org/cgi-bin/cases/case_detail.pl?id=14&amp;lang=en</a>
The “Tomimaru” Case	Japan v. Russian Federation, Prompt Release Judgment of 6 August 2007 <a href="http://www.itlos.org/cgi-bin/cases/case_detail.pl?id=15&amp;lang=en">http://www.itlos.org/cgi-bin/cases/case_detail.pl?id=15&amp;lang=en</a>
Case concerning Fisheries Jurisdiction	Spain v. Canada, Judgment of 4 December 1998 <a href="http://www.icj-cij.org/docket/index.php?p1=3&amp;p2=3&amp;k=ac&amp;PHPSESSID=1bb0fa7aa01f97581c67fee9b0a95399&amp;case=96&amp;code=ec&amp;p3=4&amp;PHPSESSID=1bb0fa7aa01f97581c67fee9b0a95399">http://www.icj-cij.org/docket/index.php?p1=3&amp;p2=3&amp;k=ac&amp;PHPSESSID=1bb0fa7aa01f97581c67fee9b0a95399&amp;case=96&amp;code=ec&amp;p3=4&amp;PHPSESSID=1bb0fa7aa01f97581c67fee9b0a95399</a>
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